IN THE HIGH COURT OFJUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.765 OF 2002

Shri Terance John D'Souza... Appellant

vs

The State of Maharashtra ... Respondent

Mr.A.R.Pitale for Appellant

Ms.M.M.Deshmukh A.P.P. for Respondent

CORAM : D.G.DESHPANDE AND
SMT ROSHAN .S.DALVI, JJ
DATE: 20th December, 2006

JUDGMENT (Per Smt.R.S.Dalvi,)

1. The appellant has appealed from the judgment convicting him of the offence of murder of one Pushpa Pillai on 22nd March, 2001 at about 12.30 p.m. passed by the learned Ad-hoc Additional Sessions Judge, Thane on 15th June, 2002.

2. The appellant was a student who had initially failed and later appeared in the external S.S.C. examination. The deceased was a house-

maid/governess serving in the house of the complainant. The complainant and his wife are practicing doctors in a government hospital. They are both injured witnesses.

3. It is the prosecution case that on 22nd March, 2001 the complainant and his wife who were on leave, were resting after lunch on the upper portion of their residential premises which was a row house. The complainant as also his wife heard screams of their maid. The complainant rushed down, saw the accused stabbing his maid and shouted at the accused to release her. The accused rushed to the complainant upon hearing his shouts. He attempted to stab the complainant too. The complainant resisted his attack. He was injured on the hand. At the same time, his wife, with a child in her arms, also came out and was right behind the complainant. The accused tried to stab the wife also. She sustained an injury on her neck. The clothes of the complainant, his wife as well as the child were almost fully soaked in blood. Whilst

the complainant was resisting the attack of the accused and trying to loosen the grip of his hand on the knife, which he held, the complainant's wife ran out to shout for help. She gave her child to the first person she saw near over her house. Certain neighbors collected outside her house but, none came inside. She went back towards her husband without her child. The grip of the accused was loosed by her husband. Two blood stained knives were thrown down. The complainant kept it under his tea-poy in his hall. The police arrived. The complainant, his wife, their child as well as the maid were rushed to the hospital. The maid succumbed on account of her injuries. The complainant suffered minor injuries which were treated. His wife underwent surgery on her neck since her aorta was cut but, the child mercifully escaped with only bruises.

4. Upon such a prosecution story, the accused was charged with murder of the maid, committing

house trespass, attempting to commit murder of the complainant's wife, voluntarily causing hurt to the complainant, attempting to commit robbery in the house of the complainant and attempting to cause death of the complainant's wife with deadly weapons whilst committing robbery.

5. The prosecution examined the complainant who was a doctor as its star witness. His evidence has been corroborated by his doctor wife. They are both natural, though chance, witnesses present in their own home whilst the accused committed the aforesaid offences. The prosecution has also examined the neighbor who brought the police to the house, corroborating part of the testimony of the complainant showing how the police arrived. The prosecution has also examined another neighbor as a panch witness for showing the seizure of the knives from under a tea-poy in the hall of the complainant's house as PW 4. The accused escaped in confusion that resulted upon such

grievous injuries inflicted upon all the persons present in the house and was arrested later the next day. The panch who was examined as PW 5 to show the arrest of the accused has turned hostile. Nevertheless, the accused has since remained in custody.

6. The prosecution has also examined as PW 6 the doctor who performed the post mortem examination of the deceased to record a number of internal and external injuries suffered by her, which corresponded with one and another and for showing the cause of death and use of the weapon causing such injuries.

7. The prosecution has also examined another panch as PW 7 for the seizure of the clothes of the accused upon and immediately after his arrest on the next day to show that the clothes were stained with blood and another panch as PW 8 to show the recovery of the clothes of the doctor and his wife. The prosecution has further examined another doctor who

examined the complainant and his wife as PW 9 and the Investigating Officer who investigated the case as PW 10.

8. The conviction and the sentence in this case is essentially based upon the oral evidence of the two eye witnesses, the complainant and his wife coupled with recovery of the weapons used by the accused from the house of the complainant where the incident took place and the corroborative evidence of the two doctors who performed the post mortem examination of the maid and who examined the injured being PW 6 and PW 9 respectively.

9. We may mention that though the weapon as well as the clothes of the accused, the deceased as well as the complainant and his family came to be seized under a separate panchanama as deposed by separate panchas PWs 7 & 8 the Chemical Analyser's report which came to be obtained by the Investigating Officer

during investigation upon sending these articles as well as the blood of the deceased as well as the complainant and his wife and the accused has not been relied upon. We, therefore, refrain from considering that document which has not been put to the accused to consider his say in that regard.

10. The case of the prosecution is therefore, a case of a robber who broke into the house of the complainant and in the process of his intended robbery committed murder of the maid and caused injuries upon the accused, his wife and the child and later escaped leaving his weapons in the house where the incident took place.

11. The case of the accused orally made before us and put to the witnesses in evidence is that the complainant had an illicit affair with his maid and so he, in collusion with his wife who wanted to hide the affair from being publicised, murdered their maid which offence was witnessed by the accused as an

innocent by-passer so that he came to be falsely implicated in the case. It may be stated at this juncture itself that though such a case has been put to the complainant as well as to his wife in their respective cross-examinations, the accused has not given that story as his statement to the trial Court for its consideration. If that is the case of the accused, we fail to see how the accused did not set out his whole story when being so called upon in his statement under section 313 of the Code of Criminal Procedure. We may mention that such a case would require an analysis and appreciation of the evidence from a completely different angle to ascertain the real truth of what the circumstances could have been upon the accused detailing such a case. We may also mention that in that case, it would be required of the accused to explain how he would have escaped without any blood being found on any of his clothes which later came to be seized under a panchanama as deposed to by PW 7. In fact, in such a case the accused would do well to

himself rely upon the C.A.'s report to show the blood group of the maid on the clothes of the complainant together with his clothes remaining entirely unstained with blood. No such effort is made by the accused to bring out the truth in a case of false implication of this kind.

12. The learned Advocate for the accused drew our attention to the last portion of the statement under section 313 of the Cr.P.C.recorded in this case by the trial Judge to show that when the accused was asked whether he wanted to examine any witnesses, he had answered in the affirmative. We do not see how the accused can throw up his hands after merely answering in the affirmative. The accused has not given any list of any witnesses or shown which kind of witnesses he desired to examine. He has not shown even to us which kind of witnesses he desired to examine and which was not allowed to be examined by the learned trial Judge.

13. We may mention that the accused was then 16 years 2 months old. He claimed to be a juvenile. Upon amendment to the Juvenile Justice Act in the year 2000, he was required to prove his juvenility for which he has made an attempt by producing certain documents which are private documents and not certified copies of government records. Consequently, he would be required to prove those documents by examining the witnesses himself. Hence, the answer to the question of whether he wanted to examine witnesses or not does not show that the accused at all desired to examine any witnesses to prove his innocence or his false implication.

14. The prosecution case therefore has to be considered and viewed only from the evidence of the two injured eye witnesses, the complainant and his wife, coupled with the corroborative medical evidence and the fact of the recovery of the weapons from the place of the incident.

15. The complainant PW 1 who was the Medical Officer in Bombay Municipal Corporation Hospital, Matunga, was on leave on 22nd March, 2000. After taking lunch, he was resting in the bed room on the first floor of his house (which was a row house). His maid was cleaning utensils in the kitchen which was on the ground floor. He heard screams of his maid. He and his wife ran down. He saw the accused stabbing his maid with a knife on her chest. She was bleeding profusely. There was a pool of blood accumulated in the kitchen. He tried to defend her. He shifted to the accused to relieve (release) her. The accused ran towards him and tried to inflict a knife blow on him. He caught hold of the wrist of the accused. Since his wife was standing behind him, she sustained bleeding injury to her neck in the scuffle. He also sustained injuries on his left forearm, right thumb and the back side of his right thigh. His right hand thumb was almost decapitated from his palm

and was hanging. He shifted his wife and his maid to Lok Hospital which was situated nearby. He admitted his maid in the operation theatre. His son (who was carried by his wife) also sustained injuries,. His thumb was stitched. His wife was also admitted for surgery into the operation theatre. He learnt that his maid had expired.

16. He returned home at 2.30 p.m. The police had arrived. His F.I.R. was recorded.

17. In his cross-examination, he has repeated the suggestion that his maid wanted to leave the service but, he was not permitting her to leave. He has further deposed in his cross-examination that he knew the accused, as he was residing about 50 to 60 feet from his house and used to come for medical treatment. He used to see him walking on the road along with his dog near his house.

18. His cross-examination further shows the two

knives being recovered from underneath the teapoy in the hall of his house. Both were stained with blood. He had kept them there. The police had recovered them from that place. He has identified them in Court.

19. He has been cross-examined on the fact that when he left for his emergency treatment for himself, his family and his maid, he had not latched the door of his kitchen or of his house. The cross-examination shows that people were standing in front of his house by the time they had left for treatment. The accused was remaining in the house. He escaped later. That was the time between the complainant leaving the house for treatment and the police arriving at his house.

20. The evidence relating to the injuries suffered by the complainant, his wife, his son as well as his maid are not denied. In the position, in which they were, no one is expected to latch the door on the face

of the people standing just in front of it. The doctor was not even expected to hold on to the accused as top priority. The most natural conduct of the victim in those circumstances would be to take emergency treatment. The complainant as well as his wife were doctors. The complainant's thumb was almost entirely severed. His wife had injuries to her neck which resulted in profuse bleeding. His maid was stabbed. His child was also injured. In the circumstances, the complainant would only consider saving his maid from death and treat himself and his family as the top priority. His cross-examination shows that he did not know where the accused had gone after the incident and he did not inquire about it or confine him in the kitchen by locking the door. All these aspects might come to the mind of the people in retrospect. The presence of mind for doing such acts is rarely expected of people who are injured to that extent.

21. He has been cross-examined even on the

knives which were recovered from the house. He admitted as true of the fact that neither of the knives belonged to him and he had kept them under the teapoy. He has of course not complained that the accused had used two knives while assaulting. His complaint was in respect of the assault and not number of weapons used. The fact remains that two knives were found under the teapoy corroborated by the panchas in whose presence they were recovered. They were produced and identified in Court.

22. His cross-examination shows that his maid was of an average built and in his presence did not resist the attack. It is because of that that she met with her death. His cross-examination shows the total length of the incident to be of 7 to 8 minutes. The incident as it transpired was from the attack of the accused on the ground floor when screams were heard by him,his running towards the ground floor from where screams was heard and then diverting the

accused towards himself by shouting to release his maid which in turn resulted in injuries to himself as well as to his wife who followed closely behind him with the child, indeed shows an incident of about that time. In fact, the period of the time of the incident appears to be rather an accurate description of the incident, the content of which is conspicuously absent in the cross examination.

23. Rather than demolishing the incident itself as completely false or an exaggerated attempt, the accused has only sought to throw mud upon the character of the doctor. A case is put, which is refuted, that the complainant had illicit relations with the maid which was disliked by her and for which he, in collusion with his wife, sought to do away with her, whilst the accused, who was an innocent bypasser, came to be falsely implicated as he was the eye witness to the offence committed by the complainant. It is not explained how the accused knew such fact.

24. Much is sought to be made about the fact that in the prosecution case, his wife and he were the only eye witnesses. That is naturally so because, they were the only inhabitants of the house.

25. His wife, who has served as Medical Officer in the same hospital and who has been examined as PW 2, was also on leave on that fatal day. Her evidence completely corroborates the fact of what both of them were doing at the time of the incident in their bed room on the first floor. Her evidence shows that upon hearing the screams of the maid, they rushed downstairs. She followed him along with her baby. From the staircase itself, the back door of the kitchen opens. She saw the accused at that time. She witnessed the accused in the kitchen with a knife in his hand stabbing the maid in front of the kitchen platform. Her husband shouted to the accused to leave the maid. The accused therefore ran towards them

with the knife in his hand and attempted to stab her husband who resisted the blow and sustained bleeding injuries. She was standing right behind her husband with her baby when the accused was trying to stab her baby. While she tried to protect the baby, she received a knife blow on the left side of the neck. She fell down along with the baby. Her husband tried to protect her and sustained injuries also. She managed to rush out of the house along with the baby by opening the door. She tried to give her baby to the first person who came in front of the house. The baby was covered with blood and was crying. She shouted for help. The passers by collected near her house but, none came inside. She rushed back into the house by which time the accused had been managed to be cornered against the hall of the clinic. She went to the Lok Hospital with her neighbor Radhika. She was taken to the operation theatre for surgery on her neck. Mercifully, she found her child not having any injury except minor abrasions. She remained in the hospital

for the day. Her maid expired.

26. Her clothes were stained with blood which was produced by her and identified in Court as having been recovered by the police. The two knives used during the assault and recovered by the police were also identified by her.

27. Her cross-examination has needlessly gone into her past life with which we are not concerned. She has been cross-examined on how the articles were stolen from her house. Her evidence shows that her husband's credit card was missing after they returned from the hospital. She has also being examined on whether she recognised the accused's clothes. She had answered that she could not doso with her baby in her hand. Her deposition shows that she saw the scuffle for 4 to 5 seconds only. The knives which were recovered and identified by her did not belong to their house. She has refuted the insinuation that she did

not try to rescue her maid from the clutches of the accused. She has been also cross examined how the main door can be opened and how many persons had visited her at that time, (Being doctors, they had some visiting patients.)

28. She has also deposed about the residence of the accused in the vicinity and the fact that he was residing there. He was educated up to SSC. He never visited in their absence or entered the kitchen. He did not come in the house. He used to pass in front of the house. She has refuted the suggestion that her maid was unwilling to serve them or that there was an affair between her husband and the maid for which she wanted to leave their service and that she took leave on that day for conspiring with the husband to murder her to conceal his illicit relations.

29. The prosecution has examined a neighbor as PW 3 who got the police to the house. The police

arrived before the complainant returned from the hospital after undergoing emergency treatment. He is a natural witness who helped in bringing the crime to book. His cross-examination is made to suggest that he had cordial relations with the complainant which does not in any manner dilute his testimony. In fact, the cross-examination also shows that he knew the accused as the person residing in the locality.

30. PW 3 was one of the persons gathered in front of the house of the complainant on that day. He was that he was invited to act as a panch. He saw the blood stained steps on the door of the house and blood in front of the sofa set in the hall. He also saw two knives beneath the tea poy. The knives were seized in his presence and a panchanama was made. He identified those knives in Court. His cross-examination shows his residence in the neighborhood. He is, therefore, a natural panch witness being a respectable person from the neighbourhood called by

the police to witness there recovery of the weapons from the place of the incident. His cross-examination shows that he was in the front of the house of the complainant to get to know of the incident. He knew the complainant which is natural.

31. PW 5 is a panch relating to the arrest of the accused who has turned hostile. Nevertheless, the fact remains that the accused was arrested later on the same day and has since remained in custody.

32. PW 6 is the doctor who performed the post-mortem upon the maid. He has set out the external as well as internal injuries which led to her death soon after the incident. The injuries are to her left wrist, left elbow, right elbow, right axilo, left side of the chest, right side of the breast, and the right lumber region. The internal injuries are fractures to 6 ribs, injury passing through the heart anteriorly and posteriorly i.e. through and through, thoracic cavity being full of

about 1.5 litres of blood, pericardium and heart being ruptured anteriorly and posteriorly. Further, the doctor's evidence of internal injuries shows blood in the heart and abdominal cavity being found full of about 1.5 litres of blood and the liver being ruptured. His deposition shows that the internal injuries corresponded with the external injuries and all were ante mortem. The cause of death was haemorrhagic shock due to the injury to heart and liver by a hard, sharp and pointed object. He has deposed that such injuries can be caused by knives which were produced in Court and shown to him. **His cross-examination shows** that such injuries were possible in a scuffle between two persons with such knives.

33. PW 7 is the panch, also from the neighborhood, in whose presence 3 clothes of the accused which were stained with blood came to be seized. He has refuted the suggestion that the clothes did not belong to the accused though he has admitted that they were not sealed and labeled. He has also deposed that it did not

happen that the accused took off his clothes which was seized by the police.

. The evidence of PW 7 about the seizure of the clothes of the accused identified in Court, which are blood stained show the involvement of the accused in the incident. A mere eyewitness would not have his clothes blood stained. This is also therefore, a very strong circumstance consistent with the guilt of the accused. PW 8 is a panch, a teacher by profession in whose presence clothes of the complainant and his wife came to be recovered. He was not known to the complainant.

34. PW 9 is the doctor who examined the complainant, his wife and son in Lok Hospital where he served as a Surgeon. He has deposed about the injuries suffered by them. His evidence shows the injuries on the left side of the wife's neck and minor abrasions on the neck. It shows one stab wound on the right thumb of the complainant as also stab wound in

the left forearm with minor abrasions on the right palm. He has deposed that the child did not have any external injury except nasal bleeding. 3 injury certificates were identified by him. and produced by the prosecution in evidence. His cross examination shows that such injuries would be the result of a scuffle with a sharp edged weapon with the person.

35. PW 10, the Investigating Officer, has shown how the entire investigation was completed on the date of the incident itself.

36. It may be mentioned that each of the witnesses have deposed without embellishment. The entire incident is narrated as a descriptive event by the doctor and corroborated by his wife who are both injured eye witnesses. They in turn were corroborated by the medical evidence contained in the post-mortem report produced by the doctor PW 6 with regard to the maid and the 3 certificates produced by the doctor PW 8 with regard to the injured witnesses. The witnesses

are from the same locality, and accordingly, natural panch witnesses more specially PW 4 at whose instance the knives were recovered from the place of the incident from below the teapoy where the complainant had put them.

37. Despite the fact that PW 5 was a hostile panch witness, the arrest of the accused from the date of the incident itself is admitted. PW 3, the neighbor, did the most natural thing under the circumstances by a person who did not want to get personally involved in a dangerous incident but would would resort to the machinery of law. He, therefore brought the police to the place of the incident.

38. The hall mark of the case of the prosecution is the narration of the events by a respectable doctor. He was in a way a chance witness ; he remained in the house on an official working day as he availed leave along with his wife from the hospital where he and his

wife served. He, therefore, saw a good part of the incident on a working day. The screams of the maid shows the first brutal attack. He had to run a short distance from the first floor of his house to the ground floor. That would happen in a matter of seconds. His running towards the place of the scream and his screaming itself shows how the attention of the accused came to be diverted. His evidence about his his intention to release the maid from the accused is compatible with the act of screaming. Diversion of the accused towards him, his wife following close on his heels resulted in the scuffle between him and the accused. His injuries are the direct consequence of such a scuffle; he having sustained them mostly on his hands with a scratch on his thigh. This is expected to happen in a scuffle when one person resists the attack of one other and tries to loosen the grip on the weapon.

40. The wife's injuries are also consistent with her position. She was right behind her husband when

he was involved in the scuffle. The attacker, therefore, would attack her. This happened on the left side of her neck which came in direct contact with the weapon wielding arm. Her effort in protecting her child caused her injuries. The blow on the maid, powerful as it was shows the pool of blood where she was attacked by way of stab injury. The post-mortem report Exhibit 18 produced by the doctor PW 6 who narrated the internal as well as external injuries shows the resistance, albeit unsuccessfully, put up by her. The resistance resulted in injuries to the wrist as well as to both the elbows. The stab caused the injuries so severe in the chest as to drain the heart entirely of blood and to fill the thoracic cavity as well as the abdomen with as much as 1.5 litres of blood aside from the rupture of the pericardium, heart and liver and fracture to 6 ribs.

The cross examination of both these doctors in fact nails the accused completely. The cross examination shows the scuffle ensued between the

three victims and the accused and that the injuries were the result of such weapon such as the knife produced in evidence.

41. The evidence of the complainant and his wife, which corroborates one another, shows that the incident took place in the house of the complainant as deposed by them. It is further corroborated by the evidence of the two doctors, and the recovery of the knife showing that the injuries could be caused by such a weapon as per the expert evidence. These are therefore, very strong corroborative circumstances. Such evidence is sufficient to maintain the conviction. These findings are considered and correctly evaluated by the learned trial Judge.

42. The arrest of the accused on the same day and his identification by both the injured eye witnesses as he was known to them connects the accused with the crime. It is not disputed that the accused lived in

the same locality. In fact, the accused has been brought out to be a one time failed SSC student.

42. The case sought to be put in cross-examination of the witnesses that the because of alleged illicit affair of the complainant with the maid, the complainant stabbed the maid in collusion with his wife which act was witnessed by the accused is an independent eye witness is required to be explained by the accused. Except for putting such a case to the complainant and his wife, no such exercise is undertaken by him. His presence at that time is not denied. His case would show that he was present albeit as an eye witness. He would, therefore, not be expected in the house of the complainant. He would be expected to have witnessed the incident from outside. In that event, his clothes would not be blood stained. He would have run away much before the crime could be noticed. This would also not explain the the spectators and bystanders who collected right in

front of the house except upon the screams of the maid. If the accused had witnessed the incident, he is expected to have told about it to the mob that collected. It is only after the accused explained the circumstances which prevailed at the time of the incident that his story would be accepted.

43. The accused has shown nothing of the kind. He has not even stated these facts either orally or in the written statement to the trial Court at the end of his statement recorded under section 313 Cr.P.C. No such case therefore, can be relied upon by the accused. It is rightly not accepted by the learned trial Judge.

44. It is contended on behalf of the accused that he had sought to examine the witnesses which was not availed. Nothing is shown to us that the Courts specifically rejected his application for examining any witnesses. All that is shown to us is a question

whether he desired to examine any witnesses and his answer in the affirmative. If that was so, it was for the accused to give a list of his witnesses. That is not done. It is for the accused to examine himself in view of his defence since he could depose about his eye witness account. The list of his witnesses, if any, could only be corroborative. As an eye witness, as per the case put to the prosecution witnesses, he cannot do well only to examine witnesses. The contention now made before us is, therefore, merely a farce.

45. The accused has contended that he was 16 years 2 months of age at the time of the incident. He has shown his date of birth to be 9th January, 1985 from the documents produced by him. These documents are merely a mark sheet and his school leaving certificate. These are private documents and are required to be proved by the party producing them. That has not been done. The witnesses which the accused must have desired to examine are with regard

to the proof of his date of birth which remained to be done. For lack of any examination, these documents remained unproved.

The accused has not produced his birth certificate which is a certified extract as a public record of the accused and the presumption as to the correctness of the contents thereof. In the case of **Ravinder Singh Gorkhi vs State of U.P. (2006) 5 SCC 584** the manner of proof of private school documents by an accused claiming juvenility is laid down. The accused had not proved the documents proving his juvenility.

46. Learned Advocate on behalf of the accused drew our attention to the decision in the case of **Pratap Singh vs State of Jharkhand 2005 All M.R.(Cri) 2258** (S.C.) and of **Satbir Singh & ors vs State of Haryana (2005) 12 Supreme Court Cases 72** relating to the applicability of Juvenile Justice (Amendment) Act,2000. The judgment in the case of Satbir Singh

specifically lays down the applicability of the Act, for the offender who was 17 years of age as on the date of the offence being 14th June, 1989. The accused in that case was held not entitled to the benefit of the Juvenile Justice Act as was then in force following the case of Pratap Singh supra, which laid down that the applicability of the Act is as on the date of occurrence and not on the date of trial and that if the offender had not completed 16 years on 1st April, 2000 he would be entitled to claim the benefit of the Juvenile Justice Act. However, the proof of the age as laid down in the Gorkhi's supra is not shown.

47. Under the circumstances, the appeal fails and is dismissed. The judgment of the learned trial Judge is confirmed.

48. However,though the accused cannot claim the benefits of the amended Juvenile Justice Act for want of proof of the documents about his age, it is seen that he is indeed a young offender. He is required to serve

out a life sentence upon his conviction for an offence of murder. However, we deem it fit to make a specific mention of the fact that the prison authorities should consider reformative measures to be applied in respect of the accused during the period of his imprisonment since he is a first time offender and at an impressionable age which could change the course of his future after his release. We, therefore, specifically direct that during the period of his imprisonment, the accused be initiated into any of the reformative activities or courses.

(Smt R.S.Dalvi, J) **(D.G.Deshpande, J)**